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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 DUSTON OMAR MILLER,

8 Plaintiff,

9 v.

10 WILL HUBBARD, *et al.*,

11 Defendants.

Case No. 2:16-cv-02051-RFB-GWF

ORDER

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13 The Ninth Circuit referred this matter to this Court for the limited purpose of determining
14 whether Plaintiff Duston Omar Miller’s *in forma pauperis* status should continue for the duration
15 of his appeal. ECF No. 52. Miller appeals this Court’s November 7, 2018 Order, in which this
16 Court dismissed Miller’s claims that defendants lacked probable cause to support the initial seizure
17 of Miller and falsified evidence that supported Miller’s conviction.

18 After review of the record, this Court certifies that the appeal is not taken in good faith and
19 finds that Miller’s *in forma pauperis* status should therefore be revoked. “An appeal may not be
20 taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28
21 U.S.C. § 1915(a)(3). An appeal is not taken in good faith if it is frivolous. Neitzke v. Williams,
22 490 U.S. 319, 325. An appeal is frivolous if it lacks “an arguable basis either in law or in fact.”
23 Id. (quotation omitted). Because Miller challenges the validity of his initial seizure and the
24 evidence upon which he was convicted, his claims are barred by Heck v. Humphrey as his
25 conviction has not been overturned independently from this suit. 512 U.S. 477 (1994) (prohibiting
26 civil rights claims based on actions that would render an underlying conviction invalid when the
27 conviction has not been reversed, expunged, or called into question by a writ of habeas corpus);
28 see also Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996) (applying Heck to challenges

1 regarding probable cause in a civil rights suit). Miller's claims therefore lack an arguable basis in
2 the law, rendering the instant appeal frivolous. Because the instant appeal is frivolous—and
3 therefore not made in good faith—this Court finds that Miller's *in forma pauperis* status shall not
4 continue for purposes of the appeal.

5 **IT IS THEREFORE ORDERED** that Plaintiff Duston Miller's *in forma pauperis* status
6 is revoked based on this Court certification that his appeal is not made in good faith.

7 DATED: December 13, 2018.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE